IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 1004 of 2001
(old no. 429/90)

New India Assurance Company
Limited, Haldwani …… Appellant

Versus

Smt. Jiwanti Bhandari & others ……. Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. G.B. Pande, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 15.02.1990 passed by Shri R.M. Rai, the then learned III Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital (Camp Haldwani) whereby in M.A.C. Case No. 106 of 1988 the Tribunal has awarded Rs. 15,000/- under Section 92-A of Motor Vehicles Act, 1939 as compensation to the applicants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Ram Singh Bhandari (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Shri Ram Singh Bhandari (deceased) and many other passengers got burn injuries and died. The deceased was earning Rs. 1,885/- per month as salary. Smt. Jiwanti Bhandari, claimant No. 1 is widow of the deceased while Ms. Manju Bhandari (claimant No.

2) and Master Mukesh Bhandari (claimant No. 3) are daughter and son respectively of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Sri Ram Singh Bhandari. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No .2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

i) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No. 1 or for and on behalf of opposite party No. 4? In either case, its effect?

ii) Whether, in the accident in question, Ram Singh Bhandari, the husband of the petitioner and father of petitioner Nos. 2 and 3 had died in the accident?

iii) Whether, on the date of the alleged accident the opposite party No. 1 was not the owner of the vehicle and had no control over the vehicle and the driver? If so, its effect?

iv) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

v) Which of the opposite parties is liable to pay compensation of the claimants?

vi) To what amount of compensation, if any, the claimants are entitled?

vii) Whether, the bus was owned by opposite party No. 4 on the date of accident, if so, its effect?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled under Section 92-A of M.V. Act, 1939 to compensation to the tune of Rs. 15,000/- and the New India Assurance company Ltd., with whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance Company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record.

7. We find no fault in the order passed by the Claims Tribunal while awarding compensation under Section 92-A of the M.V. Act, 1939 to the extent of Rs. 15,000/- along with 10% interest per annum from the date of petition till the date of actual payment for the failure of the insurer to provide the above amount as prompt interim relief to the claimants of the deceased.

8. In view of the aforesaid facts and circumstances of the case, we find no illegality or infirmity in the order passed by the Claims Tribunal, Nainital. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt: 07.07.2004
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